

No. 9/5/84-6 Lab. /8243—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of the Haryana Agro Industries Corporation Limited, Chandigarh.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 161 of 78

Between

SHRI DHUP SINGH, WORKMAN AND THE MANAGEMENT OF THE HARYANA AGRO INDUSTRIES CORPORATION LIMITED, CHANDIGARH.

Present :- Shri T.C. Gupta, A.R. for the workman.

Shri M.M. Kaushal, A.R. for the management.

AWARD

1. An industrial dispute, reproduced below, between the workman Shri Dhup Singh and the management of the Haryana Agro Industries Corporation Ltd., Chandigarh the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, referred the same to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/HSR/429-78/33164 dated 17th July, 1978.

Whether the termination of service of Shri Dhup Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The case of the workman as made out from the statement of the claim is that he was appointed on permanent basis as Tractor Operator by the respondent on 20th March, 1974. and worked as such till 10th November, 1975 on which date, his services were terminated by the management without any chargesheet or holding any enquiry and that wages were being paid to him were Rs. 447/- p.m. Inter alia it is alleged that earlier he was placed under suspension on 4th September, 1975 and that his subsequent termination on 10th November, 1975 is unlawful and illegal and in flagrant disregard of the provisions of section 25-F of the Industrial Disputes, Act, 1947.

3. In the detailed written statement filed by the respondent, it is alleged that the claimant was appointed as Combine Operator on 20th March, 1974 on fixed salary of Rs 300 per month. It is further alleged that he was placed under suspension on 4th September, 1975 for serious allegations of mis-conduct reported by the Agriculture Service Engineer, Farmers Service Centre, Sirsa, under whom the claimant was working. Again a complaint was received from Shri Paras Ram of Sirsa about the unbecoming behaviour of the workman, who demanded wine from the complainant and so the management was constrained to dispense with the services of the workman. Another plea projected is that the demand notice was raised by the workman after a lapse of 1½ year of his termination, which shows that the workman slumbered over the matter for a long time and so also the reference is delayed and deserves to be rejected.

4. On the pleadings of the parties, the following issues were laid down for decision on 4th August, 1979 :—

- (1) what is the effect of serving the demand notice after one and half year ?
- (2) Whether the termination of service of Shri Dhup Singh was justified and in order ? If not, to what relief is he entitled ?

5. The management examined in all six witnesses and the workman two, beside making a statement in support of his claim. I shall discuss their testimonies at the appropriate stage. I have heard the learned Authorised Representative of the workman Shri T.C. Gupta and Shri M.M. Kaushal, learned Authorised Representative of the respondent and have gone through the evidence on record. My findings on the issues framed are as below :—

Issue No. 2

6. There is no dispute between the parties regarding date of appointment of the claimant, through they are at variance regarding the wages being paid to him. They are also on the same footing regarding the date of suspension and ultimate termination. The case of the management is that the behaviour of the workman was insolent, arrogant and unbecoming towards his seniors and the farmers who came into his contact during the course

of his duties and so the management was constrained to place him under suspension on 4th September, 1975, which failed to curb his contumacy and so the management was left with no alternative but to dispense with his services on 10th November, 1975. because the workman was found to be a liability upon the respondent whose continued employment with the respondent was effecting business of the respondent corporation. In support of these allegations, the management examined MW-1 Shri Paras Ram, who stated that he hired the services of the respondent for tilling his land and deposited Rs 150 with the respondent corporation and that the respondent corporation deputed the claimant to do the tilling job with the tractor but the claimant demanded a bottle of wine from him on pain of recording excess time for lesser work done. Ex. MW-1 is the copy of the complaint filed by the witness with the respondent. MW-2 is Shri Mohinder Singh, who stated that in the year 1975 he was employed with the respondent as mechanic-cum-Chargeman and so he came into contact with the claimant, who was in the habit of picking up quarrels with his seniors and the customers who came to the service centre. MW-3 is Shri Kulwant Rai who was employed as Apprentice Mechanic with the respondent at Sirsa in the year 1975. He also stated about the insolent behaviour of the workman towards the customers who came to the service centre to employ the services of the respondent. MW-4 is Shri D.R. Khurana, Assistant Engineer of the respondent corporation. He stated that he was posted as Agriculture Service Engineer with the respondent corporation at Sirsa and as such he knew the workman, who was employed as Tractor Operator under him and that he used to allot duties to the claimant whose behaviour with the seniors was most arrogant and unbecoming and that he used to receive verbal complaints against the workman and so he was constrained write a letter to the Executive Engineer regarding behaviour of the workman, copy of the same is Ex. MW-4/1. After discussion with the said officer the workman was placed under suspension,—vide Ex. MW-4/2 and that he received complaint-MW-1 from Shri Paras Ram. Regarding this complaint he had a telephonic talk with the Managing Director of the respondent corporation and that he also received verbal complaint from Shri Baljit Kumar against the workman. MW-5 is Shri Kanwar Bhan, who stated that the workman was given copies of the memoes Ex. MW-5/1. MW-6 Shri Rajinder Paul, Assistant Secretary of the respondent, who is employed with the respondent since the year 1971 at Kurukshetra head office who stated that the respondent corporation has branches at many prominent towns of Haryana i.e. Panipat, Sirsa, Ladwa and Nilokheri etc. and that initially the claimant was employed at Panipat Centre and after that he was shifted to Nilokheri and Sirsa Centre and that when the workman was employed at Panipat Centre, a complaint was filed against him by Shri L.R. Kaushal regarding his misbehaviour. Regarding this complaint a censure letter was issued to the workman, copy of which is Ex. MW-6/1 and the workman was shifted to Nilokheri Centre and there also the workman did not mend his ways and so he was shifted to Sirsa Centre.

7. The workman examined Shri J.P. Sirivastava, Assistant, Office of the Labour Commissioner, Haryana, Chandigarh, who stated that letter Ex. WW-1/1 was issued by the Government after lifting of the Internal Emergency in India. WW-2 is a workman Shri Dhup Singh, who made a statement completely in corroboration of the claim filed by him. WW-3 is Shri Ishwar Singh, who stated that he remained employed with the respondent from the year 1969 to 1976 and was posted at Hissar in the year 1974-75 and that there was union of the workers under the name and style of Haryana Agro Farmers Employees Union and Shri Dhup Singh workman was president of the same. A Charge sheet was issued to the claimant, copy of which is Ex. W-5. Ex. MW-6 is the copy of the order dated 27th August 1971,—vide which the conduct of the workman was censured by the Managing Director of the corporation. Ex. W-7 is the copy of the complaint against the workman made by Shri S.K. Chawla, Manager-cum-Engineer, Farmers Service Centre, Panipat. Again Ex. W-8 is the copy of the complaint against the workman made by Shri Harjit Singh, Foreman of the said Center. Ex. W-4 is the copy of the enquiry report submitted by Shri J.P. Sexena, Manager-cum-Engineer of the said Centre.

8. The learned Authorised Representative of the workman Shri T.C. Gupta contended that in terminating the services of the workman, a complete go bye was given to the provisions of section 25-F of the Industrial Disputes Act, 1947 because the workman was not given any notice or retrenchment compensation as envisaged under the said section. In support of his contention he has cited 1980 LLJ(2) 72, Santosh Gupta Versus State Bank of Patiala. In the said authority it has also been held that the expression 'retrenchment' expressly excludes termination of service, as a punishment inflicted by way of disciplinary action. His contention was that even if it is believed that the work and conduct of the workman was not satisfactory or that his behaviour towards his seniors was arrogant and unbecoming, a proper domestic enquiry should have been held and an order of dismissal should have been passed. Admittedly no order of dismissal has been passed in the present case. The order of termination dated 10th November, 1975 reads as under :—

"The services of Shri Dhup Singh, Tractor Operator, Farmers Service Centre, Sirsa are hereby terminated with immediate effect".

M.KUTTAPPAN,

Managing Director.

9. The learned Authorised Representative of the respondent Shri M.M. Kaushal, contended that the respondent has been merciful in terminating the service of the workman by passing an order of discharge simpliciter and that is not a fault to be laid down at the door of the employer, nor can it be a ground for imposing on him, the services of the employee, who had been indisciplined and arrogant, conduct subversive of the smooth functioning of the respondent corporation, which was created for the benefit of indigent and unlettered farmers, who cannot

purchase modern implements of agriculture and that the conduct of the workman has been so reprehensible toward his seniors and the farmers visiting the Centre that numerous memoes and censure letters were issued to him but with no result and this conduct of the workman was adversely affecting the business of the corporation and so the respondent corporation was justified in terminating the services of the workman, though, through an innocuously worked order of termination, but actually the same was punitive in nature. I am inclined to go with the learned Authorised Representative of the respondent that the order of termination was actually an order of dismissal and was passed for good and valid reason and this Court is competent to go behind the spirit of the order as held in **1974 Indian Factories Journal 16 Gujarat Mineral Development Corporation Versus B.H. Brahmhatt**. The conduct of the workman was censured many times. Once he was placed under suspension also. He has been guilty of misbehaviour at all the service centre at which he remained posted i.e. Panipat, Nilokheri and Sirsa. So, his presence was a drag upon the functioning upon the respondent corporation, which as already observed was constituted for the benefit of small and marginal farmers, who could not afford facility of modern agricultural implements of their own. So, in a way the respondent corporation has lost confidence in the workman, because of his unbecoming behaviour with the seniors and the farmers flocking in the said service centre. Another authority in this behalf cited on behalf of the management was **1971 LLJ (I) page 233, the Management of Banitole Tea Estate and The Workman**. In this authority it was held that once an employee has lost confidence of his employer and was holding a sensitive post with the management, his imposition upon the management would be uncalled for and against the interest of the establishment. Through the respondent corporation was justified in dispensation with the services of the workman but in the process in doing so, it failed to hold domestic enquiry and as such his termination from service was in flagrant disregard of the provisions of section 25-F of the Industrial Disputes Act, 1947 and as such the same is held to be illegal and unlawful but the relief of reinstatement cannot be awarded to the workman for the reasons detailed above, because it would be inexpedient and improper to impose an insolent and arrogant workman upon the respondent corporation, which was constituted to cater to the needs of small and marginal farmers and the awarding of suitable compensation to the workman will meet the ends of justice. So, this issue in this light, is decided in favour of the workman.

Issue No. 1

10. The services of the workman were terminated on 10th November, 1975 and the demand notice copy of which was received with the order of reference was raised on 6th July, 1977, after a lapse of 1½ year. The delay of 1½ year in raising a demand notice cannot be held to be fatal to the claimant, especially, when no limitation is prescribed for raising a demand notice.

11. In the light of my foregoing discussion, I am disinclined to award the relief of reinstatement to the workman and instead of that award him wages as compensation for the period 11th November, 1975 to 27th August, 1980 because 28th August, 1980 onwards the workman remained employed with the Haryana Agriculture University, Hissar. The workman shall also be entitled to one months notice pay and other benefits as envisaged under Section 25-F of the Industrial Disputes Act, 1947. The reference is answered and returned accordingly. There is no order as to cost.

Dated : 18th October, 1984.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst No. 3516 dated 8th November, 1984

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/8244.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of The Administrator, Municipality, Sonapat.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 53 of 1982

between

SHRI SURINDER KUMAR, WORKMAN AND THE MANAGEMENT OF ADMINISTRATOR, MUNICIPALITY, SONEPAT.

Present.—

Shri S. N. Vats, A. R. for the workman.

Shri Umed Singh Dahiya, L. A. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Surinder Kumar and the management of Administrator, Municipality, Sonapat, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/SPT/177/81/16029, dated the 25th March, 1982 :—

Whether the termination of service of Shri Surnider Kumar was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was appointed as Octroi Moharrar on 1st November, 1980 against regular vacancy but his services were terminated by the respondent on 28th September, 1981, all of a sudden without complying with the provisions of the Industrial Disputes Act, 1947, though the work and conduct of the workman throughout has been most exemplary.

3. In the reply filed by the respondent, appointment of the workman on 1st November, 1980 as a Octroi Moharrar is admitted but it is alleged that he was posted against a temporary vacancy and his services were terminated on 31st July, 1981. Because the workman was not a candidate from the Employment Exchange and instructions were received from the Government of Haryana to recruit candidates sponsored through the Employment Exchange. The workman was given denovo appointment but he refused to accept the same without benefit of previous service.

4. In the replication filed by the workman, he has controverted the various pleas taken by the management.

5. On the pleadings of the parties, the following issues were framed on 21st December, 1982:

1. Whether this Court has no jurisdiction to try the present reference ?
2. Whether the termination of service of Shri Surinder Kumar was justified and in order ? If not, to what relief is he entitled ?

6. The management examined Shri Chander Singh, Octroi Superintendent, as MW-1 and MW-2 Shri M. L. Taneja, Medical Officer, Municipality Sonapat. The workman appeared as his own witness as WW-1 and made a statement completely in corroboration of the allegations made in the demand notice.

7. I have heard Shri S. N. Vats, learned Authorised Representative of the workman and Shri Umed Singh Dehiya, Legal Adviser of the respondent. My findings on the issues framed are as below :—

Issue No. 1

8. The learned counsel for the respondent could not raise any dispute about jurisdiction of this Court to try the present reference. So, he did not press for the decision of this issue.

Issue No. 2

9. The case of the management is, that the workman was employed on 1st November, 1980 against temporary vacancy of Octroi Moharrar and he was posted in the slaughter house,—vide order dated 23rd December, 1980, copy of which is Exhibit MW-2/1 and that the services of the workman were terminated on 31st July, 1981 after instructions had been received from the Government of Haryana to recruit candidates sponsored through the Employment Exchange. In my opinion, contention put forth on behalf of the respondent committee is contrary to the evidence on record. The management itself placed on record a certificate issued by the Administrator Municipal Committee Sonapat dated the 1st October, 1981 that the workman remained employed as Octroi Moharrar with the said Committee from 1st November, 1980 to 30th August, 1981. Then there is an order, copy of which is Exhibit MW1,—vide which, services of the workman were dispensed with forthwith. The said order is dated 26th/28th August, 1981. Now the question would be as to how to fix the date of termination of the workman. The Court has before it three different dates. One is the one given in the reply filed by the management. In the same it is alleged that the services of the workman were terminated on 31st July, 1981. Then there is a certificate of the Administrator, copy of which is Exhibit WW-1/1, wherein, the said date has been shown 30th August, 1981. The 3rd is a letter of the Administrator dated the 26th/28th August, 1981 dispensing with the services of the workman forthwith. The Fourth version has come from the mouth of MW-2, Shri M. L. Taneja, Medical Officer of the respondent. He stated that the workman Shri Surinder Kumar worked under him from 27th December, 1980 to 30th September, 1981. The learned legal Adviser of the respondent has no defence to offer for these indiscreet orders passed by the respondent. So, I find that the workman worked with

the respondent till 28th September, 1981, the date given by him, in the claim statement. So, before his date of termination the workman had worked for more than 240 days in the last 12 calendar months with the respondent. Completion of one year service is not necessary as held in 1981 Vol. 14 Lab. I.C. page 808 at page 814. Observations made in para 14 of the said judgment can be extracted with advantages :—

“These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. If it is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year”.

In a concurring judgment Pathak J. agreed that this interpretation of Section 25B(2). Therefore, both on principal and on precedent it must be held that Section 25B(2) comprehends a situation where a workman is not in employment for period of 12 calendar months, but has rendered services for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i. e. the date of retrenchment. If he has he would be deemed to be in continuous service for a period of one year for the purpose of Section 25B and Chapter VA.

10. Since the workman had completed 240 days of actual work with the respondent on the date of termination of his services and the management did not give him any notice or retrenchment compensation as envisaged in section 25-F of the Industrial Disputes Act, 1947. So, the order of terminating his service is held to be illegal and void *abinitio* and as such the same is set aside. So, this issue is answered in favour of the workman.

11. In the light of my foregoing discussion, the order of termination of services of the workman is held to be illegal, null and void *abinitio* and the workman is ordered to be reinstated forthwith with continuity of service and with full back wages. This reference is answered and returned accordingly. There is no order as to cost.

Dated the 19th October, 1984.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

Endst. No. 53/82/3520, dated the 8th November, 1984.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 19th October, 1984.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/5/84-6Lab/8245.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. National Textile and General Industry, Modern Industrial Estate, Bahadurgarh :—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 243 of 80

between

SHRI LAXMAN, WORKMAN AND THE MANAGEMENT OF M/S. NATIONAL TEXTILE AND GENERAL INDUSTRY, MODERN INDUSTRIAL ESTATE, BAHADURGARH

Present :

Shri N. P. Sinha, A. R. for the workman.

Shri M. Kaushal, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Laxman and the management of M/s. National Textile and General Industry, Modern Industrial Estate, Bahadurgarh, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/RTK/150-80/56471, dated the 13th November, 1980 :

Whether the termination of services of Shri Laxman was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The case of the workman as made out from the claim statement is that he was in the employment of the respondent as Operator on card machine on monthly wages of Rs. 240 for the last 2½ years and that on 9th February, 1980 he received an injury by accident arising out of and during the course of his employment with the respondent, resulting in amputation of two fingers of his right hand and that after treatment of the injury, he approached the respondent on 10th June, 1980 but he was not allowed to resume his duties and so the management in a way terminated his services unlawfully without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947.

3. A detailed reply has been filed by the respondent, in which preliminary pleas projected are that the services of the workman were never terminated by the respondent and as such this reference is beyond the scope of section 2(a) of the Industrial Disputes Act, 1947. It is further alleged that as a result of accident suffered by the workman on 9th February, 1980 he became permanently disabled on account of loss of two fingers of the right hand and as such the workman expressed his inability to perform his duties and as such at his own asking he was discharged on 16th June, 1980. The reply on merits runs on the same line and so, I need not suffer repetition.

4. In the replication filed by the workman, he has controverted the various pleas of the management. He alleged that after treatment of the injury suffered by him, the management did not afford him any chance to perform his duties in spite of disability suffered by him and as such the management has been guilty of *mala-fide* termination of the workman.

5. On the pleadings of the parties, the following issues were settled for decision on 10th July, 1981:—

- (1) Whether the present dispute is not coverable under section 2-A of the Industrial Disputes Act as per the reasons given in preliminary objections ?
- (2) Whether the termination of services of Shri Laxman was justified and in order ? If not, to what relief is he entitled ?

6. The management in all produced four witnesses and the workman in reply appeared as his own witness as WW-1.

7. I have heard Shri N. P. Sinha, learned Authorised Representative of the workman and Shri M. M. Kaushal, learned Authorised Representative of the respondent. My findings on the issues framed are as below :—

Issue No. 1 :

8. The plea projected by the management was that the matter referred to this Court is not covered under section 2-A of the Industrial Disputes Act, 1947. In my opinion, the contention is not well founded. The opening words of the section are "where any employer discharges, dismisses, retrenches or otherwise terminates"..... The case of the management as made out from the reply filed to the statement of claim is that the services of the workman were discharged because of the 25 per cent permanent disability suffered by him, in the accident which took place on 9th February, 1980. So, it cannot be held that the reference is not covered under section 2-A of the said Act.

9. During the course of arguments the learned Authorised Representative of the respondent took a somersault and argued that the reference made to this Court by the competent authority is regarding termination of service of the workman but it is a case of discharge and as such the reference is bad in law. In support of this contention reliance was placed upon 1984 LLN page 197 Sitaram Vishnu Shirodkar and Administrator Government of Goa and others. This plea now sought to be raised is beyond the scope of pleadings of the respondent and as such the same can not be considered and so this authority has no application to the controversy in hand. So, this issue is answered in favour of the workman.

10. *Issue No. 2.*—The admitted case of the parties is that the workman suffered an accident during the course of employment with the respondent on 9th February, 1980. He was under treatment of the E.S.I. Doctor and ultimately he was declared 25 per cent disabled. The workman alleged that he approached the management on 10th June, 1980 to allow him to resume his duties but the management went on putting him off on one pretext or the other and ultimately did not allow him to resume his duty, though a fitness certificate from E.S.I. Doctor was produced by him before the management.

11. Now the question would be as to whether it is a case of discharge or termination. The plea of the respondent was that because of the partial disability suffered by the workman his case falls squarely under section 2(00)(c) of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act) and as such the management was justified in discharging the workman. In support of this contention reliance was placed upon a letter alleged to have been written by the workman to the respondent, photo copy of which is Exhibit MW-3/4, where in he admitted that he was unfit to work at the job at which he was employed after loss of two fingers of the right hand. In this same letter the workman pleaded for reinstatement. In that behalf, reliance was placed upon 1984 LLN 754, *Match and Ply Wood Mazdoor Sabha and Star Wood Works*. In the said case the workman suffered disability of 30 per cent of his earning capacity. He has lost three fingers of one hand. In the present case the workman has lost two fingers of the right hand and as per certificate issued by the doctor of the E.S.I. Corporation, the workman has lost 25 per cent earning capacity. So, there is a marginal difference in the loss of earning capacity of the present workman and that of the workman a reference of which has been made in the authority under reference. So, the authority under reference applies with full force to the facts of the present case. So, the case of the present workman does fall under section 2(00) (c) of the said act. Oral evidence produced by the management comprises of the statement of MW-1, Shri H.B. Chawla, Manager, E.S.I. Corporation, who stated that because of the accident suffered by the workman on 9th February, 1980 he has awarded 25 per cent permanent disability by the Medical Board of the E.S.I. Corporation and that the workman has already been paid commuted value in lump sum in respect of the permanent disablement suffered by him. MW-2 is Shri Chander Singh, who vouched for the correctness of the settlement Ex. MW-2/2 and MW-2/3. MW-3 is Shri Narinder Kumar Gupat, partner of the respondent concern. He admitted that the workman approached the management with a letter Ex. MW-3/4 and that he was asked to produce a fitness certificate, which he never did. He further stated that he was called by the Labour-cum-Conciliation Officer during conciliation proceedings and during those proceedings the workman admitted that he was not fit to work at the job at which he was employed earlier. On the other hand when the workman appeared as his own witness as WW-1 he stated that after obtaining a fitness certificate from a doctor of the E.S.I. Corporation, he approached the management to allow him to resume his duties but the management went on putting him off till 7th July, 1980, after which he was constrained to raise a demand notice. I also made efforts to know about the nature of duties being performed by the workman prior to the accident. I was told that the workman had to handle a shaft or beam measuring about 81 inches. In my opinion, a workman who has lost two fingers of the right hand is not fit to handle job of the nature at which the workman was employed earlier and so the alleged discharge of the workman cannot be held to be termination of his services and that his case falls squarely under section 2(00) (c) of the said Act. A contract of service requires certain physical fitness in the workman. Therefore, if a workman is discharged on the ground of ill health, because he was unfit to discharge the services which he had under taken under the contract to render. On behalf of the respondent reference was also made to section 98 of the Employees State Insurance Act, 1948. The said section provides for discharge of an employee who has been in receipt of disablement benefit for temporary disablement. In the present case the workman has suffered 25 per cent permanent disability and the benefit under the same has been got computed by him in lump sum. It was admitted during the course of arguments that the workman has received more than Rs. 6,000 from the E.S.I. Corporation on this account.

12. Though there was no plea on behalf of the respondent that the workman remained gainfully employed after his alleged discharge but evidence was produced by the Management and the point was discussed during the course of arguments. The management has produced MW-4 Shri Subhash Chand Gupta, Manager of M/S Baljit Packer Ballabgarh. He has stated that the workman sought employment with M/S. Baljit Packers under fictitious name of Kali Parshad. He has produced a photo copy of the application filed by the workman along with his photograph. Similarly the management has adduced evidence to prove that the workman remained employed with Capital Textile, Delhi also under a different name Laxmi Narain. Since the reinstatement of the workman is not being ordered, so, I need not discuss this sordid conduct of the workman, who has tried to seek employment under different name to hoodwink the management from culling evidence that he remained gainfully employed after his discharge.

13. Since the workman has spent about four years in pursuing the case in the Labour Court, so, on compassionate grounds, and taking into consideration, the permanent disability, suffered by him, the workman shall be paid a sum equal to the compensation which he would have been entitled, in case of retrenchment. As per his own showing the workman remained employed with the respondent for 2½ years prior to this discharge. So, the workman shall be paid compensation for this period besides pay for one month in lieu of the notice period as envisaged under section 25-F of the Industrial Disputes Act, 1947. So, this issue to this extent goes in favour of the workman.

14. In the light of my foregoing discussion, I find that there was no termination of services of the workman by the management as alleged and that it was a case of discharge as contemplated under section 2(00) (c) of the said Act but on compassionate grounds the workman is awarded monetary benefits equal to the compensation which he would have been entitled in case of retrenchment under section 25-F of the Industrial Disputes Act, 1947. The reference is answered and returned accordingly. There is no order as to cost.

Dated 22nd October, 1984.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

Endst No. 243/80/3523, Dated 8th November, 1984

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

No. 9/5/84-6 Lab-8246.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the Management of M/s The Secretary, Board of School Education, Haryana, Bhiwani.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 134 of 1982

between

SHRI RAJ KAPOOR, WORKMAN, AND THE MANAGEMENT OF M/S THE SECRETARY, BOARD OF SCHOOL EDUCATION, HARYANA, BHIWANI

Present :

Shri S.S. Gupta, A.R. for the workman.

Shri H. R. Vats, A.R. for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act 1947, the Governor of Haryana, referred the following dispute, to this Court, between Shri Raj Kapoor, workman, and the Management of M/s The Secretary, Board of School Education Haryana, Bhiwani, for adjudication,—vide Labour Department Notification No. ID/HSR/89/81/32831, dated 9th July, 1982 :—

whether the termination of service of Shri Raj Kapoor was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared. In the demand notice, the workman alleged that he was serving as a peon in the respondent office and his work and conduct was quite satisfactory during the tenure of his employment, but his services were illegally terminated by the respondent,—vide his order dated 9th July, 1977 treating the workman as *ad hoc* employee and the termination of service of the workman is illegal, unjustified and against the provisions of the Industrial Disputes Act, 1947.

In the reply filed by the management, it is alleged that the respondent is not an "Industry" as defined in the Industrial Disputes Act, 1947, because the same is functioning under the provisions of Haryana Board of School Education Act, 1969 and its employees are governed by Civil Service Rules in the matter of punishment etc. So it is alleged that the reference is bad in law.

On merits, it is admitted that the services of the workman were dispensed with,—vide office order, dated 9th July, 1977, because he was employed on purely temporary basis. Since he was recruited directly and not through the Employment Exchange, services of all the employees so recruited were terminated. As such it is alleged that the termination of services of the workman was in accordance with the rules.

On the pleadings of the parties, following issues were settled for decision :—

- (1) whether the management does not fall under the definition of Industry ? If so, to what effect ?
- (2) whether the termination of service of Shri Raj Kapoor was justified and in order ? If not, to what relief is he entitled ?

6. The management examined MW-1 Shri Parkash Chand, Assistant of the respondent board and workman appeared as his own witness as WW-1. I have heard the learned Authorised Representatives of the parties and have gone through the evidence adduced. My findings on the issues framed are as below :—

Issue No. 1 :

7. The learned Authorised Representative of the respondent Shri H.R. Vats contended that the respondent board is not an "Industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) because it performs functions and duties as assigned to it under the Haryana Board of School Education Act, 1959 and its employees are governed by the Punjab Civil Services Rules in the matter of punishment. This contention raised by him is in accordance with the preliminary objection raised by the respondent in the reply. On the other hand the learned Authorised Representative for the workman Shri S.S. Gupta cited the often quoted authority reported in AIR 1978 S.C. page 548. In this authority their Lordships of the Hon'ble Supreme Court of India in page No. 120 made observations, which repel the contention raised on behalf of the respondent board. So, the observations made in this paragraph are quoted for ready reference :—

"The next argument which has appealed to the Court in that case is that education develops the personality of the pupil and this process, if described as industry, sounds grotesque. We are unable to appreciate the force of this reasoning, if we may respectfully say so. It is true that our societal values assign a high place of honour to education, but how does it follow from this that education is not a service? The sequitur is not easily discernible. The pejorative assumption seems to be that "Industry" is something vulgar, inferior, disparaging and should not be allowed to sully the sanctified subject of education. In our view, industry is a noble term and embraces even the most sublime activity. At any rate, in legal terminology located in the statutory definition it is not money-making, it is not lucre-loving, it is not commercialising, it is not profit hunger. On the other hand, a team of painters who produce works of art and sell them or an orchestra group which travels and performs and makes money may be an industry if they employ supportive staff of artistes or others. There is no degrading touch about "industry", especially in the light of Mahatma Gandhi's dictum that "work is worship". Indeed the colonial system of education, which divorced book learning from manual work and practical training has been responsible for the calamities in that field. For that very reason, Gandhiji and Dr. Zakir Hussain propagated basic education which used work as *modus operandus* for teaching. We have hardly any hesitation in regarding education as an industry".

8. So, there is no doubt left that the respondent board fall within the ambit of the term "industry" as defined in section 2(j) of the Industrial Disputes Act and so, this issue goes against the management.

Issue No. 2 :

9. The grotesque ground for terminating services of the workman taken by the respondent was that other candidate sponsored by the Employment Exchange had to be appointed under instructions from the Government of Haryana. Instructions might have been received by the respondent from the Government of Haryana in that behalf but that is no ground to hold that the respondent was justified in dispensing with the services of the workman in manner, he did. It was a simple case of termination without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947. Authorities on the point cited on behalf of the workman were 1983 Lab. I.C. 1627 *Executive Engineer Electrical Division Nagpur versus Parkash Devidas Kalsait*, 1980 *Indian Factories and Labour Reports*, 113 P. Prabhakaran and others and General Manager, Kerala State Road Transport Corporation and another. The Kerala authority meets the contention raised on behalf of the respondent that the employment of the workman was for a fixed period with break in service. Reliance was also placed upon 1980 (2) LLJ 16 *Engineering Construction Corporation Ltd. Madras versus Additional Labour Court Madras and others* and 1983 Lab. I.C. 1906. *Hari Mohan Rastogi versus Labour Court and another*. In this authority it was held that where case of termination of an employee did not fall under any of the exception in section 2(00) of the Industrial Disputes Act, 1947, such termination would amount to retrenchment and where pre-requisite for a valid order of retrenchment were absent, the order of termination would be invalid and inoperative. Admittedly the case of the present workman does not fall in any of the exception laid down under section 2(00) of the said Act and as such the termination of the workman was illegal and flimsy ground offered by the respondent that the workman was not a candidate sponsored by the Employment Exchange can not be pressed into service by the respondent to dispense with the services of the workman. So, the order of termination is held to be illegal and void *abinitio* being in gross violation of provisions of section 25-F of the Industrial Disputes Act, 1947. So, this issue is answered in favour of the workman.

10. In the light of my foregoing discussions, it is held that the order of termination is illegal and void ab initio and as such unsustainable in the eyes of law, so, the workman is ordered to be reinstated with continuity of service. Usually when an order of termination is removed, full wages are awarded to the workman but there may be certain exceptional circumstances, where Court can make a departure from the normal rule. The services of the workman were terminated on 9th July, 1977. The demand notice was raised by the workman on 24th March, 1981 after a lapse of less than four years. Admittedly there is no limitation prescribed for raising a demand notice but the delay in raising the demand notice without reasonable explanation, (which is not coming forth in the present case), can be taken into account by the Court in awarding the back wages. So, taken into consideration the totality of circumstances, and the nature of duty in which the respondent board is engaged, the workman is awarded 25% of back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated : the 25th October, 1984.

(B. P. JINDAL),

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 134/82/3525, dated 8th November, 1984

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

The 6th December, 1984

No. 9/5/84-6 Lab/8554.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Agro Polymerse Industries, G.T. Road, Kundli (Sonapat).

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 112 of 1984

between

SHRI UMA SHANKAR, WORKMAN AND THE MANAGEMENT OF M/S AGRO POLYMERSE INDUSTRIES, G.T. ROAD, KUNDLI (SONEPAT).

Present :—

None, for the workman.

Shri D. C. Gandhi, A. R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Uma Shankar and the management of M/s Agro Polymerse Industries, G.T. Road, Kundli, (Sonapat), to this Court, for adjudication,—vide Labour Department Gazette, Notification No. 24618-23, dated 13th July, 1984 :—

Whether the termination of services of Shri Uma Shankar was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, usual notices were issued to the parties. The parties appeared. The workman alleged that he was working as Mixure Operator with the respondent for the last four years on monthly wages of Rs. 406/- but the respondent choose to unlawfully terminated his services on 27th January, 1984 in gross violation of the provisions of the Industrial Disputes Act 1947. Since the address of the workman as given in the order of reference was through Rubber Workers Union CITU Sonapat. Notice of the reference was given to the union and Shri S. N. Solanki appeared in pursuance of the same but he could not produce any letter of authority on behalf of the workman, who is not coming forth to prosecute the same. Since no home address of the workman was on the file, so no notice could be given to the workman. Had the workman been interested in prosecution of the reference he would have definitely contacted the union leaders. It seems that the

workman is not interested in prosecution of the reference. So, the same was ordered to be dismissed for non-prosecution and answered accordingly. There is no order as to cost.

Dated the 12th November, 1984.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

Endorsement No. 112-84/3640, dated the 22nd November, 1984.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonapat.

No. 9/5/84-6 Lab/8560.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s A.K. Industries Modern Industrial Estate Bahadurgarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

Reference No. 285 of 1983

between

SHRI BHAGWAN PARSHAD, WORKMAN AND THE MANAGEMENT OF M/S. A. K.
INDUSTRIES MODERN INDUSTRIAL ESTATE BAHADURGARH, (ROHTAK).

Present .—

None, for the workman.

Shri M. M. Kaushal, A. R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Bhagwan Parshad and the management of M/s. A.K. Industries Modern Industrial Estate, Bahadurgarh (Rohtak), to this Court, for adjudication;—vide Labour Department Gazette Notification No. 64305-10, dated 8th December, 1983:—

Whether the termination of services of Shri Bhagwan Parshad was justified and in order ? If not, to what relief is he entitled ?

2. The workman alleged that he was in the employment of the respondent since 1st September, 1981 as a Packer on monthly wages of Rs. 500/- but his services were unlawfully terminated by the respondent on 19th July, 1983 in gross violation of the provisions of section 25-F of the Industrial Disputes Act, 1947.

3. After receipt of the order of reference, notices were sent to the parties. Both the parties appeared. But later on the workman absented. It seems that the workman is not interested in prosecution of the reference. So the same is dismissed and answered accordingly. There is no order as to costs.

Dated the 7th November, 1984.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,

Endorsement No. 285-83/3649, dated the 22nd November, 1984

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

The 10th December, 1984

No. 9/5/84-6Lab/8643.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana, is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Crucible Steel (I) Private Ltd., Plot No. 178, Sector-24, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 31/1984

between

SHRI MOHAN LAL, WORKMAN AND THE MANAGEMENT OF M/S. CRUCIBLE STEEL (I)
PRIVATE LTD., PLOT NO. 178, SECTOR-24, FARIDABAD.

Present.—

None.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Mohan Lal, workman and the management of M/s. Crucible Steel (I) Private Ltd., Plot No. 178, Sector-24, Faridabad, to this Tribunal, for adjudication :—

Whether the termination of services of Shri Mohan Lal, was justified and in order?
If not, to what relief is he entitled?

Notices were issued to both the parties. It may be mentioned that on the last date of hearing, none was present on behalf of both the parties, even though they were represented previously and as such *ex parte* proceedings were ordered against both the parties. It appears that both the parties are not interested in the reference. The award is passed accordingly.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 9th November, 1984.

Endorsement No. 1216, dated the 21st November, 1984

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.